2007 Assessor School Case Law Review

Points to Watch For

- It’s the assessor’s burden to prove some Native American Lands are taxable
- In exemptions, beneficial Ownership is more important than title in a County name
- Exemptions are not warranted if there is even a potential for any profits to an individual

Points to Watch For

- Some Personal Property held for rentals for more than 1 month are taxable
- Significant changes to prewritten programs can make them custom
- Multifunction Devices (printer/fax/copiers) are not computers or peripherals and are taxable

Points to watch for

- Long term contract rents should be the basis for market value
- The record showed that the Board of Review Chair acted on his will, not the BOR's judgment
- The cost approach to value is not as relevant as the income for billboards

Points to Watch For

- Open Records laws are violated by the municipality if the assessment records are not made available
- Sellers must provide clear notice of a potential Ag-Use penalty
- Economic Intent might be an appropriate analysis in Ag-Use classification decisions

Keweenaw Bay Indian Community v Naftaly & Town of L'Anse (US Court of Appeals)

- This is a Native American Reservation in Michigan's Upper Peninsula
- In an 1854 Treaty the Lake Superior Chippewa ceded these reservation lands in which the President could assign land to individuals, including a restriction of alienation.

Keweenaw Bay Indian Community v Naftaly & Town of L'Anse (US Court of Appeals)

- Identifying property as alienable implies the right to tax, and take away if the taxes are unpaid (involuntary alienation)
- Treaty interpretation evolved to interpreting in favor of the Indians when language was not clear
- The Indians had made it clear that their primary concern was to remain in the country where they resided and were to receive land for their homes

Keweenaw Bay Indian Community v Naftaly & Town of L'Anse (US Court of Appeals)

- Case law had concluded that only if Congress had clearly expressed it's intent to tax
- Later acts did so, however this court concluded Congress had never expressed the intent required in this case

Keweenaw Bay Indian Community v Naftaly & Town of L'Anse (US Court of Appeals)

- The conclusion is that the reservation lands under the Treaty of 1854 are not taxable when owned by Tribe or Tribal member in fee simple.

Milwaukee Regional Medical Center Inc. v City of Wauwatosa (Supreme Court)

- ISSUE 1: Local Government Ownership per Sec.70.11(2) Wis Stats:
- Milwaukee Regional Medical Center (MRMC) is a consortium of governmental and private nonprofit institutions
- The land is rented from Milwaukee County
- The land is used to house a day care facility

Milwaukee Regional Medical Center Inc. v City of Wauwatosa (Supreme Court)

- The court reviewed 14 indicia leaning towards county ownership and 15 indicia pointing towards MRMC
- 5 were the focus: 50 year length of lease, exclusivity of occupancy by MRMC, title of the day care facility in MRMC, $1/yr token rent for 30 years, and no daily operation by the County.

Milwaukee Regional Medical Center Inc. v City of Wauwatosa (Supreme Court)

- The court commented that it considers the totality of the circumstances
- In this case the beneficial owner, ‘at the present time’ is the MRMC and not exempt under 70.11(2)

Milwaukee Regional Medical Center Inc. v City of Wauwatosa (Supreme Court)

- ISSUE 2: Does the MRMC qualify as an educational association under Sec. 70.11(4)?
- There are two stages to the test:

Milwaukee Regional Medical Center Inc. v City of Wauwatosa (Supreme Court)

Stage 1:

- 1 Prop owner must be an Ed Assoc.
- 2 Prop must be owned/used exclusively for purposes of Assoc.
- 3 Prop must be less than 10 acres
- 4 Prop must be necessary for location and convenience of the buildings
- 5 Prop must not be used for profit

Milwaukee Regional Medical Center Inc. v City of Wauwatosa (Supreme Court)

Stage 2

- The educational association:
- 1 must be a non profit organization primarily devoted to educational purposes and
- 2 must be devoted to ‘traditional ‘ educational activities

Milwaukee Regional Medical Center Inc. v City of Wauwatosa (Supreme Court)

- The City argued that all activities of the owner must be considered
- The Court agreed, they reviewed not just the day care activities, but all of MRMC's activities because it is the taxable entity
- MRMC is not an educational organization, therefore taxable

Ridge Side Cooperative v City of Madison (Appellate Court)

- This was NOT published and may not be cited.
- Ridge Side argued ‘benevolent organization’ exempt per Sec. 70.11(4)
- The ‘limited-equity’ Co-op offers low to moderate income households affordable housing

Ridge Side Cooperative v City of Madison (Appellate Court)

- Residents gain occupancy by payment of a $3,200 ‘transfer fee’
- All 9 apartment-like units are occupied by members of Ridge Side
- Upon dissolution, all proceeds are donated to non-profit providers of affordable housing

Ridge Side Cooperative v City of Madison (Appellate Court)

- Departing residents can sell their occupancy rights for up to the original occupancy fee plus up to a 5% annual ‘increase’
- Ridge Side argued that case law has allowed exceptions to some ‘use for gain’, though the court notes that was minor and not gain for a member

Ridge Side Cooperative v City of Madison (Appellate Court)

- The Court ruled that case law is clear that a benevolent association must be completely free from the fact or even possibility of profits accruing to its founders, officers, directors, or members
- Ridge Side was determined to be taxable

United Rentals v City of Madison (Appellate Court)

- United Rentals argued that their personal property was exempt under Sec 70.111(22) ‘Rented Personal Property’
- Rental Agreement forms were for 1 day, 1 week, or 4 weeks (28 days)
- 10% of the equipment was rented beyond 28 days over the past 2 years

United Rentals v City of Madison (Appellate Court)

The courts interpreted the statute to mean that the exemption:

- was *only* for property held for rental for 1 month or less, and
- *not* for property available for rental for longer periods

Because United Rentals concedes it's property is available for periods longer than 1 month, it is not exempt

Wisconsin Department of Revenue v Menasha Corporation (Appellate Court)

- This case is currently under review at the Supreme Court
- This is a sales and use tax case
- Menasha Corp purchased a ‘business application’ computer software program (R/3 System) which consisted of 70+ modules (Base cost was $5.2 million)
- The R/3 System requires modifications to fit the individual client’s operations

Wisconsin Department of Revenue v Menasha Corporation (Appellate Court)

- The software designer company (SAP) has partner corporations providing modifications
- Customization costs were over $16 Million
- The extent of the modifications necessary for the buyer to use the program led to the conclusion that this was customized software and therefore exempt

Xerox v Wisconsin Department of Revenue (Circuit Court)

- This was NOT published and may not be cited.
- The Cities of Milwaukee and La Crosse initially assessed this personal property
- The property is multifunction devices (MFD's) which include printer scanner and fax components in one unit

Xerox v Wisconsin Department of Revenue (Circuit Court)

- Issue 1: The circuit court sent case back so that the Tax Appeal Commission examiner who sat in on the hearing, and left the commission prior to the decision could issue a report to the commissioners making the decision

Xerox v Wisconsin Department of Revenue (Circuit Court)

- The commission did not adopt the revised modifications and findings, which were not determined to be findings of fact, but conclusions of law.
- The court concludes that this subsequent report provides fairness in the procedures

Xerox v Wisconsin Department of Revenue (Circuit Court)

- Issue 2: Xerox argues that the equipment it manufactures and leases should be considered a computer peripheral and exempt under 70.11(39)
- The court interprets this as a legal issue to determine how the MFD's should be categorized given the undisputed facts on how they function

Xerox v Wisconsin Department of Revenue (Circuit Court)

- Proving exempt status is the property owner's burden
- Exemptions are allowed to the extent that the plain language permits
- Construing exemptions should be strict but reasonable

Xerox v Wisconsin Department of Revenue (Circuit Court)

- The Wisconsin Property Assessment Manual, 2001, identified the ‘all in one printer/scanner/fax/copier as:
- Combination device that includes an exempt device
- Exempt-provided the device is connected to and operated by a computer

Xerox v Wisconsin Department of Revenue (Circuit Court)

- The court ruled that:
- The Main Controller (a computer) is in the MFD
- The question is the status of the MFD as a whole, not a component in the device
- The MFD is not ‘peripheral’ equipment and therefore taxable.

Xerox v Wisconsin Department of Revenue (Circuit Court)

- Note that the 2002 Wisconsin Property Assessment manual was revised to reflect the all-in-one devices as taxable
- Taxable – Unless the device is connected to and operated by a computer

Walgreen Company v City of Madison (Appellate Court)

- This case is currently under review at the Supreme Court
- Walgreens' developer selects locations, buys land, builds building to specifications, includes a return on their investment and financing costs in a long term lease with the company

Walgreen Company v City of Madison (Appellate Court)

- Walgreens argues that:
- 1 The value should be based on the fee simple interest value
- 2 Sales of comparable properties should be the basis of value
- 3 Walgreens rents are not like Darcel's, which were market when entered into

Walgreen Company v City of Madison (Appellate Court)

- 4 The Circuit Court improperly ignored Walgreens' comparable sales
- 5 uniformity was violated because comparable properties to Walgreens was assessed at ½ the $/square foot

Walgreen Company v City of Madison (Appellate Court)

- The City argues that:
- There are no comparable sales with atypical leasing arrangements
- The best approach is the income approach, using the locked-in lease rents

Walgreen Company v City of Madison (Appellate Court)

- The Court concluded:
- 1 The case law developed in Darcel, Metropolitan, and West Bend conclude that the potential sale price is of the bundle of rights the owner has to sell
- 2 Contract rents, whether above or below market, should be considered

Walgreen Company v City of Madison (Appellate Court)

- 3 While they were entered into at arms length, they are higher than other rentals at the time, however Walgreens failed to explain why that mattered
- 4 The Circuit Court was free to decide which data was more credible, and the atypical lease was a factor of comparability appropriate to consider

Walgreen Company v City of Madison (Appellate Court)

- 5 Uniformity requires that the method of taxing must be applied uniformly to all classes of property within the tax district
- 6 Properties Walgreens points out as not being uniform are not comparable due to the profitable long-term lease

Walgreen Company v City of Madison (Appellate Court)

- Conclusion:
- The City assessor relied on the contract rent to estimate what the properties “will {if sold} sell for in and arms-length transaction.”
- The assessment is affirmed

Market Square Associates v BOR for Village of Menomonee Falls (Appellate Court)

- This was NOT published and may not be cited.
- Market Square is an 88 unit apartment building
- Market Square's appraisal was $3.9 M:
- 1 Appraiser used comparable sales
- 2 No comparable sales in Meno Falls
- 3 Use C Waukesha, S Milw, Greenfield and West Allis

Market Square Associates v BOR for Village of Menomonee Falls (Appellate Court)

- Assessor's value was $4.3 M
- 1 No Comparable Sales in Meno Falls
- 2 Used Income and Cost approaches

BOR Chair states:

- 1 Presume Assessor is correct
- 2 Need overwhelming evidence
- 3 Assessors 2 approached indeed correct
- 4 We do not agree w/owner's opinion

Market Square Associates v BOR for Village of Menomonee Falls (Appellate Court)

In the hearing the assessor responded:

- 1 Are the owner's sales comparable : 'no comment'
- 2 would averaging the $/square foot sale price of appraiser's 5 sales give a reasonable range? : "I have no experience in any of these areas"

Market Square Associates v BOR for Village of Menomonee Falls (Appellate Court)

Court comments include:

- 1 Proper standard is ‘sufficient showing’ that the valuation is incorrect, not overwhelming evidence
- 2 The owner’s sales were sufficient to question the assessor considering the Markarian Hierarchy

Market Square Associates v BOR for Village of Menomonee Falls (Appellate Court)

- 3 In the taped deliberations, there were no statements other than the chair's

The court determined that this was a decision which represented the will of the BOR chair, rather than the BOR's judgment, and remanded the case back

Central Outdoor, LLC V City of Wausau (Appellate Court)

- This was NOT published and may not be cited.
- This case deals with an order to raze a billboard
- The City valued the billboard based on the depreciated cost approach at $1,565.21 referred to as ‘net assessed value’

Central Outdoor, LLC V City of Wausau (Appellate Court)

- The statutes presume expenses in excess of 50% of the value are unreasonable ($782.61 per the City)
- The cost to repair was $1039.80
- The sign generates $6,000 yearly
- Testimony established that the sign would sell for 5 to 6 times the yearly billing, and indicated value of $30,000

Central Outdoor, LLC V City of Wausau (Appellate Court)

The court stated that:

- 1 The City's 'net assessed value' did not accurately reflect the fair market value
- 2 The billboard would sell on the market for $30,000
- Therefore the order affirmed the dismissal of the order to raze

WIREdata Inc v Village of Sussex et.al. (Appellate Court)

- This published case is currently under review at the Supreme Court
- WIREdata Inc. sought the assessment records in the format created and maintained in a computer database.
- The municipalities used Assessment Technologies, LLC's Market Drive computer program to maintain their assessment records

WIREdata Inc v Village of Sussex et.al. (Appellate Court)

- In 2003 the Seventh Circuit Court held that the process of extracting the raw data WIREdata sought from Market Drive did not violate copyright law.
- The municipalities and the independent assessment contractors provided a PDF (portable document file).

WIREdata Inc v Village of Sussex et.al. (Appellate Court)

- The PDF version was described as "… a photocopy of an electronic document viewed as a picture…"
- The appellate court concluded: "…the language of the law itself and the public policy underpinning the open records law require more."
- 'WIREdata may request access to this database for purposes of examination and copying of the source data.'

WIREdata Inc v Village of Sussex et.al. (Appellate Court)

- The inputted data, maintained at public expense in the Microsoft database, is as much of the public record as if it were written on paper record cards and organized and stored in a file cabinet.
- The municipalities were held liable: '…public bodies cannot evade their responsibilities under the open records laws by delegating both the record's creation and custody to a contractor'

WIREdata Inc v Village of Sussex et.al. (Appellate Court)

- In a footnote, the appellate court states: “We recommend that in the future when municipalities outsource government services such as property assessments, they address open records compliance in their contracts.”

Brian Thomas v Richard Pringle (Appellate Court)

- This was NOT published and may not be cited.
- Pringles subdivided property assessed as agricultural property
- The January 2004 Declaration limited the property to residential use
- In January 2004 the property was rezoned to R-1 Residential

Brian Thomas v Richard Pringle (Appellate Court)

- Thomas purchased a lot in March 2004
- Thomas asked the farmer to continue working the land
- Thomas never built on the land; sold it in late 2005
- In July 2005 Thomas received a penalty as owner @ the time of the change in use (presumably in 2004)

Brian Thomas v Richard Pringle (Appellate Court)

Thomas had received:

- 1. Title insurance commitment explaining use-value penalty for the land's use change
- 2. 2001 version of Real Estate Condition Report identifying it's assessment under use value, w/out comments

Brian Thomas v Richard Pringle (Appellate Court)

Thomas alleged lack of complete and proper disclosure under Sec.74.485

Circuit Court decided:

- 1. Pringle changed use when Declaration was filed, reinforced by zoning change
- 2. The Real Estate Condition Report did not meet statutory notice requirement

Brian Thomas v Richard Pringle (Appellate Court)

- Appellate Court did not address when the use changed; that was not appealed; the issue was proper notice
- Thomas argued he did not know *he* might be liable without even pulling a building permit

Brian Thomas v Richard Pringle (Appellate Court)

The 2002 version of Sec. 74.485 statute requires notification of all the following:

- 1. The land had been assessed as agricultural land
- 2. Whether a penalty had been assessed
- 3. Whether a deferral had been granted

Brian Thomas v Richard Pringle (Appellate Court)

- The purpose of the change was to make sure the buyer understood the potential consequences
- The 2001 outdated notice was incomplete and in this case represented misrepresentation by omission

Michael and Linda Bliss vs.. Wi Department of Revenue (TAC)

- This is an income tax case of an assessment by the Wi Department of Revenue challenging trade or business deductions claimed in carrying out a ‘trade or business’ as a tree farm
- It can provide helpful guidance in verifying whether an activity is an economic agricultural activity

Michael and Linda Bliss vs.. Wi Department of Revenue (TAC)

- Facts in the case included:
- No research on tree farming had been done of the land or the process
- Their plan was to have trees favoring habitat for turkeys, deer and grouse
- They did not belong to any tree farming organizations
- Without a plan, they planted whatever trees they could get their hands on

Michael and Linda Bliss vs.. Wi Department of Revenue (TAC)

- They testified they bought the land to get away from people, hunt and relax
- Their only income was CRP payments on land they could not cut
- They had no books of account for tree farming

Michael and Linda Bliss vs.. Wi Department of Revenue (TAC)

- In testing whether an activity is for profit, ‘all facts & circumstances’ are considered, where no one factor is determinative.
- There are 9 factors to consider:
  1. Manner in which the activity is carried out.
  2. Expertise of taxpayer or his advisor
  3. Time and effort expended
  4. Expectation of asset appreciation
  5. Taxpayer success in similar activities
  6. History of income and loses
  7. Amount of occasional profits
  8. Financial status of taxpayer
  9. Any elements of personal pleasure or recreation

Michael and Linda Bliss vs.. Wi Department of Revenue (TAC)

- In this instance, the property owner failed most of the 9 criteria
- The petitioners did not show that they were operating for a profit and this was not a trade or business